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797-338—65

In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 771

DAVID ARENDT BATES, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. A) is not yet reported.

JURISDICTION

The judgment of the court of appeals was entered on October 26, 1965. The petition for a writ of certiorari was filed on November 26, 1965. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether there was probable cause for petitioner's arrest.

2. Whether the evidence was sufficient to convict petitioner of aiding and abetting the passing of counterfeit bills.

STATUTES INVOLVED

18 U.S.C. 472 provides in pertinent part:

> Whoever, with intent to defraud, passes, utters, publishes, or sells * * * any falsely made, forged, counterfeited, or altered obligation or other security of the United States, shall be fined not more than $5,000 or imprisoned not more than fifteen years, or both.

18 U.S.C. 474 provides in pertinent part:

> * * * Whoever has in his possession or custody, except under authority from the Secretary of the Treasury or other proper officer, any obligation or other security made or executed, in whole or in part, after the similitude of any obligation or other security issued under the authority of the United States, with intent to sell or otherwise use the same; * * *
>
> * * * * *
>
> Shall be fined not more than $5,000 or imprisoned not more than fifteen years, or both.

18 U.S.C. 2(a) provides in pertinent part:

> Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal * * *.

California Penal Code § 836 provides in pertinent part:

> A peace officer may make an arrest in obedience to a warrant, or may, without a warrant, arrest a person:
>
> * * * * *
>
> (3) Whenever he has reasonable cause to believe that the person to be arrested has committed a felony, whether or not a felony has in fact been committed.

STATEMENT

After a jury trial in the United States District Court for the Southern District of California, petitioner was convicted on both counts of a two-count indictment charging illegal possession of a counterfeit treasury note and aiding and abetting the passing of a note knowing it to be counterfeit, in violation of 18 U.S.C. 474 and 472. He was sentenced to imprisonment for three years on each count, to be served concurrently, but the trial judge specified that petitioner would be eligible for parole after eight months. The court of appeals affirmed (Pet. App. A).

On August 8, 1964, a middle-aged man with gray hair and a gray mustache and wearing a brown sports coat and straw hat made several purchases at the Lucky Market in Lynwood, California. Initially, he bought two packages of toilet tissues with a $20 bill, and received change (Tr. 106–109, 65, Govt. Exh.

3–B, 255).[1] He then used another $20 bill to make a 38¢ purchase at the check stand of a Mrs. Beard (Govt. Exh. 1–A, Tr. 25–26, 31, 244). The note aroused her suspicions and she showed it to the assistant store manager. He and the manager, Mr. Hays, observed the man make a purchase of soft drinks in the liquor department with another $20 bill (Tr. 43, 48, 58–59, 75, 82, Govt. Exh. 1–B, 254). Hays followed the man outside (Tr. 58, 60, 76) and saw him walk to the end of the parking lot and enter the passenger side of a late model black Cadillac convertible with a white top and an out-of-State license plate (Tr. 76–77). Hays saw another man in the driver's seat (Tr. 80). He copied the license plate number on two pieces of paper and returned to the store. He and the assistant manager then compared two of the $20 bills that the suspect had used in the store and observed that their serial numbers were identical (Tr. 61). Hays immediately alerted a policeman whose car was parked in the lot, and watched the officer broadcast the description of the car and the purchaser on his radio (Tr. 83–87).

Luther Winn, the operator of a tow truck service in Lynwood, heard the police broadcast and five minutes later saw a white-topped black Cadillac convertible drive by his place of business, heading north. It

[1] The record of trial, filed with the Clerk of this Court, consists of five volumes. Volume 1 contains the record filed in the courts below. Volumes 2–4 contain the transcript of the trial. Volume 5, separately paginated, contains the transcript of the hearing on the motion to suppress evidence and is designated "H".

backed into a motel driveway across the street from Winn, turned, and headed south on Long Beach Boulevard. Winn walked to the curb to get a better look at the car (Tr. 115–119). He relayed his observations to the Lynwood Police Department via the police radio.[2] He then tried to follow the Cadillac in his tow truck (Tr. 117), but lost sight of it (Tr. 130–131).

Sergeant Burns of the Lynwood Police Department heard the broadcast over the police radio. He proceeded to Von's Market, which was on Long Beach Boulevard south of Winn's place of business, and saw there a Cadillac that fit the description that had been broadcast. The Cadillac had Nevada license plates (Tr. 147–148, 162). When Burns saw petitioner put a parcel in the trunk, he called him over to the police car and asked whether he was the owner of the Cadillac. Petitioner said that he was. Burns inquired where his passenger had gone, and petitioner indicated that he had no passenger (H. 16).

Further inquiry was interrupted by the arrival of Winn. Sergeant Burns talked with Winn to verify the information that Burns had received on his police radio. Winn told Burns that petitioner's car was the one he had seen, but that it had had a passenger when he saw it (Tr. 170). Burns then resumed his questioning of petitioner. Again he asked about the passenger, and petitioner repeated his denial that he was

[2] At the trial, Winn identified petitioner as the driver (Tr. 119). However, he did not describe the occupants of the Cadillac when he reported his observations on the police radio (Tr. 134).

with anyone else (H. 17). When asked about the packages visible to Burns from his view of the inside of the Cadillac, petitioner stated that he had been shopping. He indicated that he might have stopped at the Lucky Market during his shopping tour (H. 17–18).

After Officer Holmes arrived on the scene, Burns, with petitioner's permission, obtained petitioner's driver's license from the inside of the Cadillac (Tr. 171). He noticed that the grocery bags in the car were filled with various unrelated items, indicating that many small purchases had been made in a number of different shops (H. 25, Tr. 149). Petitioner was "patted down" for weapons and asked to empty the contents of his pockets onto the hood of Holmes' patrol car. Burns looked for $20 bills with similar serial numbers; he found some $20 bills but their serial numbers were different (H. 21; Tr. 189–190).* Burns left petitioner in Holmes' custody and entered Von's Market to look for the individual who had been described on the police radio (H. 21). He stayed in the store for a few minutes and then returned (Tr. 171).

On his way back to the patrol car, Burns spoke to Hays, the store manager of the Lucky Market, and to a Mrs. Walker, a customer of Von's (Tr. 192). Hays identified the Cadillac by the license number he had written down (Tr. 91, 193). Mrs. Walker told Burns

*One of these notes, it was later found, was counterfeit and had the same serial number as those passed at the Lucky Market (Govt. Ex. 5, Tr. 154–155, 256).

that as she was parking her car to shop she had seen a man with a brown coat and straw hat come from the direction of the Cadillac and enter the supermarket (Tr. 137; H. 40). Burns then told petitioner that he was placing him under arrest for passing counterfeit money (Tr. 195), and searched the Cadillac (Tr. 194; H. 28). Under the front seat, he found a grocery bag containing $390 in loose change and small bills. The bills were folded in units of $15 and $19, the largest note being a $10 bill (Tr. 149–152, 165; H. 29). Petitioner claimed that he was a professional gambler and had won the money in a dice game (H. 17, 29). Holmes handcuffed petitioner and took him to the police station. After he was booked, petitioner was directed to remove all of his personal effects once more. In the inside pocket of petitioner's jacket Holmes found twenty-seven counterfeit $20 bills, all bearing a serial number identical to that of the bills recovered from the Lucky Market (Govt. Ex. 6, Tr. 210–212, 256–257; H. 70–72). These were the bills that petitioner moved to exclude from evidence on the ground that they had been illegally seized. The motion was denied (H. 85; Tr. 265–271).

A cab driver testified that six blocks from Von's Market he had picked up a passenger whose description fit that of the man identified by Mr. Hays and Mrs. Walker. While in the cab, the man heard an alarm, issued on the cab radio, to be on the alert for "phony" $20 bills from fares in Lynwood. The driver recalled that at the end of the ride the man looked carefully

through many $20 bills before selecting one to pay him (Tr. 222–228). This man was never found or brought to trial.

ARGUMENT

1. Petitioner's arrest was lawful because based on probable cause (Cal. Penal Code § 836, p. 3, *supra*); the search incident thereto, in which counterfeit bills were found, was, therefore, also lawful. *Carroll* v. *United States*, 267 U.S. 132. Even before he reached Von's Market, Sergeant Burns knew that a passer of counterfeit bills had driven off in an easily identifiable car, that this car had been seen by Mr. Winn, a trustworthy informant, heading toward Von's with two occupants, and that, therefore, Von's was the likely next place for the counterfeiters to strike. Accordingly, Burns proceeded to Von's. There he saw the getaway car parked in the lot. And before any steps were taken that might conceivably constitute an arrest, (1) petitioner admitted to Burns that he owned the car, (2) Winn positively identified the Cadillac and informed Burns that it had had two occupants, yet (3) petitioner denied that there was a passenger. Assuming, with the court of appeals, that the arrest occurred at that early point, there was adequate probable cause. For surely the facts and circumstances within the arresting officer's knowledge, or of which he had reasonably trustworthy information, were sufficient to warrant a man of reasonable caution to believe that a felony had been committed by petitioner. That, of course, was enough to permit the arrest. See *Cuozzo* v. *United States*, 325 F. 2d

274 (C.A. 5); *Draper* v. *United States*, 358 U.S. 307; *People* v. *Ingle*, 53 Cal. 2d 407, 348 P. 2d 577. Petitioner's reliance upon *Henry* v. *United States*, 361 U.S. 98, and *Beck* v. *Ohio*, 379 U.S. 89, is misplaced. The facts of those cases are completely different. In both cases, unlike here, the defendant's vehicle was forcibly stopped and searched; the record failed to indicate the facts that might constitute probable cause; and the arrest was based upon mere rumor, or upon information from a source not shown to be reliable.

2. Petitioner's attack upon the aiding and abetting count is moot, since he received concurrent sentences and does not challenge the validity of his conviction, under count one, of illegal possession of counterfeit bills. See *Emspak* v. *United States*, 349 U.S. 190, 195. At all events, the evidence under count two was clearly sufficient. Unlike the cases petitioner cites, the evidence here established far more than mere innocent presence by petitioner at the scene of the offense. His active participation in passing the counterfeit notes was shown by the use of his car to transport the person who actually passed the notes; the finding on his person of twenty-eight counterfeit bills of the same denomination and serial number as those exchanged at the Lucky Market; the presence in his car of groceries of the type purchased at the Lucky Market and of the sack of money containing bills that were arranged in such a manner to indicate that they obviously had been received in exchange for $20 bills; the admission by petitioner that

the money and groceries were his and petitioner's discrediting denial that he had carried a passenger while traveling through Lynwood. Plainly, there was enough evidence for the court to submit the question of guilt to the jury.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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